

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 23 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
2 to 5 No

SONAL RA DESAI

Versus

STATE OF GUJARAT

Appearance:

MR S.A. DESAI WITH MR DS SHAH for Petitioner
MRS BR GAJJAR, APP for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 27/03/98

ORAL JUDGEMENT

Heard Senior Counsel Mr.S.A. Desai with Advocate Mr. D.S. Shah on behalf of the petitioner. Rule. Learned APP Mrs. B.R. Gajjar waives service of rule on behalf of respondent No.1 State. Respondents No. 2 & 3 ex parte as whereabouts of Respondent No.2 & 3 are not available as per the last given address.

2. The petitioner has challenged the legality and propriety of order passed by learned Metropolitan Magistrate, Court No.19, Ahmedabad dated 30.12.1997 in the matter of Criminal Case No.2145 of 1993 below Exhibit 19.

3. The respondents No.2 & 3 are the father-in-law and mother-in-law respectively of the present petitioner. The marriage of the present petitioner was solemnized at Ahmedabad on 4.5.1992 with one Jitendrakumar Ajitbhai Patel. It is the case of the petitioner that at the time of marriage, the parents of the petitioner had given ornaments and other valuables to the petitioner towards streedhan and during the marriage ceremony all articles and valuables including ornaments were entrusted to respondents as elders of the family. That thereafter the petitioner went to stay at matrimonial home with respondents No.2 and 3. That the husband of the petitioner who had come from USA for the purpose of marriage had left on 10th May, 1992 to USA. The petitioner continued to reside with the present respondents at the matrimonial home at Baroda. It is the further case of the petitioner that the respondents No.2 and 3 acquired dislike towards the petitioner and relations between the petitioner and respondents were not cordial. That time and again the respondents used to tell to the petitioner to go to her parental place. It is further alleged by the petitioner that as the husband of the petitioner had left and was staying at USA, the respondents advised the petitioner to stay at her parental place and thereby the petitioner had gone to stay with her parents at Ahmedabad. That during September, 1993, when the petitioner visited the matrimonial home at Bardoa, the respondents refused to permit entry to the petitioner and thereby she had to return to Ahmedabad and stay with her parents. That on or before 15th September, 1993, the petitioner is served with a summons of a civil suit filed by present respondent No.2 to restrain the present petitioner from entering into the matrimonial house. That thereby the dispute between the petitioner and respondents was deepened.

4. According to petitioner as the respondents were not giving to her the marital rights and property, she claimed sreedhan and on refusal, she filed a criminal complaint bearing Criminal Case No. 2145 of 1993 in the court of Metropolitan Magistrate, Court No.19, Ahmedabad for offences made punishable under Sections 406 read with 114 of IPC against respondents No.1 & 2. That learned Metropolitan Magistrate referred the complaint to

Ghatlodia Police Station for investigation under Section 156(3) of Cr.P.C. According to petitioner, during the investigation, the respondents No. 2 and 3 were arrested and produced before the court of learned Metropolitan Magistrate and subsequently were granted bail on certain conditions.

5. That the petitioner apprehended that as the husband of the petitioner has been staying at America and present respondents No.2 and 3 are holding green card, and as such, they could leave the local limits of jurisdiction of the court at any time and thereby frustrate the prosecution initiated by the petitioner. That on the application of the petitioner, the court directed respondents No. 2 and 3 not to leave the territory of India without the prior permission of the court. It is further alleged by the petitioner that despite such conditions, respondent No.2 in the year 1996 committed a breach of the said condition and visited USA without permission of the court. That thereafter pending the prosecution of the said complaint, petitioner has come to know that respondents No. 2 and 3 have handed over the possession of property of her matrimonial house to the tenants and have already left for USA. That respondents No. 2 and 3 have not given their new address to the court and have failed to get the address changed which was given at the time of execution of bail bond. That thereafter as the respondents No.2 and 3 were not attending the court during the proceedings of said criminal complaint, the petitioner moved an application to cancel the bail of Respondents No. 2 & 3. It appears that learned Metropolitan Magistrate rejected said application and thereby petitioner had to carry the matter to learned City Sessions Judge, Ahmedabad. It further appears that learned Addl. Sessions Judge, City Civil Court, Ahmedabad, Court No.11 also rejected the Revision Application holding that it was a technical breach of the conditions and no further action is required. That being aggrieved by that order, the petitioner preferred Spl. Criminal Application No. 1360 of 1997 in this Court, in which, the Brother Judge N.N. Mathur passed order dated 18.11.1997 directing the Metropolitan Magistrate, Court No.19 to issue standing warrant against the respondents and to arrest the respondent as and when they return to this country.

6. It further appears that respondents No.2 and 3 were deliberately avoiding to attend the court and intended to frustrate the prosecution initiated by the petitioner, hence, the petitioner moved an application to the Metropolitan Magistrate requesting the court to take

appropriate action under Sections 82 & 83 of Cr.P.C. That learned Metropolitan Magistrate, Court No.19, rejected the said application and issued only a non-bailable warrant against present respondents No. 2 and 3. That in response to notice issued to the surety of Respondents No. 2 and 3, the surety had attended the court and deposited the amount of surety bond. Learned Metropolitan Magistrate did not pass any further orders against the surety. That thereby petitioner moved Spl. Criminal Application No.1569 of 1997 in this court against the order of learned Metropolitan Magistrate. That vide order dated 18.12.1997 the Brother Judge H.R. Shelat allowed the said Spl. Criminal Application and directed the learned Metropolitan Magistrate, Court No.19 to take coercive measures required to enforce the attendance of respondents No. 2 and 3 in response to warrant issued by the court and remanded the matter for disposal in accordance with law.

7. That learned Metropolitan Magistrate heard the parties and vide impugned order decided the said application, whereby learned Metropolitan Magistrate ordered to transfer the proceedings of Criminal Case No. 2145 of 1993 to the court of Chief Judicial Magistrate, Ahmedabad (Rural) District Ahmedabad. Learned Metropolitan Magistrate has observed in the order that before issuing proclamation under Section 82, on verification of the fact, it appears that the petitioner is residing outside the limit of Ahmedabad Municipal Corporation and respondents were residing lastly at Baroda. In view of the same, the learned Metropolitan Magistrate ordered to forward the proceedings to learned CJM, Ahmedabad (Rural) to decide the application in accordance with law. Hence the petitioner has preferred the present application.

8. During the hearing of the matter, the petitioner was directed to file copy of Criminal Complaint filed against respondents No.2 and 3 in the court of Metropolitan Magistrate, Court No.19, Ahmedabad and the same is taken on record. Learned APP Mrs.B.R. Gajjar has submitted that any appropriate order necessary in the facts and circumstances of the case may be passed.

9. On perusal of impugned order, it appears that learned Metropolitan Magistrate has failed to decide the matter in accordance with law. It may be noted that in the criminal complaint filed by the present petitioner, in first para the petitioner has averred that the marriage of the present petitioner with the son of respondents No. 2 and 3 Jitendrakumar was solemnized on

4.5.1992 in the city of Ahmedabad and it is also stated in para 2 that when the petitioner was sent to matrimonial home, all the valuable articles along with ornaments, etc., were entrusted to present respondents No. 2 and 3 as elders of the family.

10. That Section 181 sub-sec (4) of Cr.P.C. prescribe the rule for jurisdiction reads as under :

"(4) Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person."

11. That learned Metropolitan Magistrate ought to have construed the said provision in the facts and circumstances averred in the complaint which were verified by the petitioner and should have held that the court has jurisdiction to hear and decide the complaint and thereby he ought to have initiated the proceedings as directed by this Court vide earlier order under Sections 82 and 83 of the Code. Further more, the learned Metropolitan

Magistrate ought to have considered the conduct of respondents No. 2 and 3 which is apparent from the facts stated hereinabove to deprive the present petitioner not only of her sreedhan but the properties of her matrimonial home and thereby ought to have considered the request made by the petitioner to restrain the respondents No. 2 and 3 from transferring or parting with possession of immovable property where the petitioner along with family members was residing at Baroda. Not only that the learned Metropolitan Magistrate should have considered that it is a fit case where simultaneous proceeding under Section 83 should also be started to protect the interest of the present petitioner.

12. On the basis of the above stated discussion, I hold that impugned order passed by learned Metropolitan Magistrate dated 30th December, 1997 suffers from jurisdictional error and is required to be set aside and quashed and the same is hereby set aside and quashed. The matter is remanded back to the learned Metropolitan Magistrate, Ahmedabad, Court No.19 with a direction that

he shall decide the Application Exhibit 19 de novo in accordance with law and as per direction given by this Court vide order dated 18.12.1997 in the proceedings of Spl. Criminal Application No.1569 of 1997. The learned Metropolitan Magistrate is further directed to decide Application Exhibit 19 of Criminal Case No. 2145 of 1993 within the period of two weeks from the date of receipt of writ. Rule is made absolute accordingly. No order as to costs. Direct service is permitted.

p.n.nair